

APPEAL NO. 020266
FILED MARCH 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 4, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable injury to the neck, low back, and right shoulder on _____, and that he had disability from April 6 to April 16, 2001, and from April 20 to November 1, 2001. The claimant appealed the determination that disability ended on November 1, 2001, arguing that the ending date of disability was against the great weight of the credible evidence. In its response, the respondent (carrier) argues that the determination was supported by sufficient evidence. The carrier did not appeal the determination that the claimant sustained a compensable injury.

DECISION

Affirmed.

The claimant testified that he performed maintenance work for the employer and that he sustained an injury to his right shoulder, neck, and low back when he fell while moving a refrigerator down a flight of stairs. At issue in this case is whether the hearing officer erred in determining that the claimant's disability ended on November 1, 2001. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. In a report dated November 1, 2001, Dr. O, who examined the claimant on behalf of the carrier, stated that the claimant had full range of motion and that there were no findings that would restrict the claimant from full-duty work. The claimant's treating doctor, Dr. A, testified that she disagreed with Dr. O's findings and that the claimant should remain off work pending the performance of additional diagnostic testing.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. As the fact finder, the hearing officer was free to give more weight to Dr. O's opinion that the claimant could return to full duty on November 1, 2001. Nothing in our review of the record indicates that the hearing officer's decision to end disability on November 1, 2001, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant alleges in his appeal that the local field office refused to schedule an appointment with a designated doctor in violation of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 (Rule 130.6) after he disputed Dr. O's findings of maximum medical improvement and impairment rating. Section 410.203(a)(1) provides that the Appeals

Panel shall consider the record developed at the hearing. See Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992, and Texas Workers' Compensation Commission Appeal No. 950331, decided April 18, 1995. The issue of the failure to appoint a designated doctor was not before the hearing officer at the hearing and no evidence was presented on that issue. Thus, we will not consider that issue for the first time on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **REALM NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JACK LATSON
FLAHIVE, OGDEN, AND LATSON
505 W. 12TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Terri Kay Oliver
Appeals Judge